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This single chapter on marketing U.S. products and services is excerpted from the FY 2005 Country Commercial Guide for Kuwait. The full text of the report is also available on this website.

CHAPTER 4

MARKETING U.S. PRODUCTS AND SERVICES

FINDING A PARTNER

Foreign companies wishing to operate in Kuwait without setting up a Kuwaiti registered legal entity may only do so through a Kuwaiti agent. The local agent must be duly appointed through an agency agreement registered with the Ministry of Commerce and Industry. Foreign companies are generally not allowed to participate directly in a Kuwaiti tender, with the exception of military tenders. Commercial Agencies Law No. 36 of 1964 and the Commercial Law No. 68 of 1980 regulate commercial agency agreements.

Commercial agents are responsible for promoting products/services for a principal; negotiating deals on the principal's behalf; concluding such deals, and carrying them out. Sole distributors have the same legal rights as commercial agents under the laws. Most agency and distribution agreements are legal without registration, but in certain circumstances registration is required such as for Central Tenders Committee (CTC) tenders, and for the Ministry of Planning (computer companies and consultants). Registration with the Ministry of Commerce and Industry should occur within two months of attestation by any official authority at the principal's location and the Embassy of Kuwait in Washington, D.C., or its consulate in New York. Agency, sponsorship or distribution agreements between a Kuwaiti company and a foreign company must be translated into Arabic by an official government translator and then registered with the Department of Commercial Agencies and the Ministry of Commerce and Industry. At a later stage, it may also be registered with the Kuwait Chamber of Commerce and Industry (optionally). Registration of an agency agreement usually takes less than two weeks from the time the documents are available in Arabic.

All contracts, both civil and military, with the Government of Kuwait valued at KD 100,000 (US \$340,000) or more are subject to Kuwait's Disclosure Law No. 25, of 1996, which requires contractors/agents to report and disclose to the Audit Bureau all payments they made/received or will make/receive when securing a contract.

AGENCY LAWS

Local agency laws are not strictly enforced and it is not uncommon to find food products imported by other than the designated agent.

Agency agreements must include the following:

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- (1) The geographic territory covered by the agency agreement;
- (2) The full range of products and services that the agent is representing;
- (3) The period of the agency agreement (recommend one year with renewal and escape clauses);
- (4) The agent's fee, which is usually fixed, but may also include a small percentage of any contracts awarded;
- (5) The choice of applicable laws and arbitration/mediation forum, in the event of a dispute. (Note: The application of foreign laws cannot contradict the public policy of Kuwait);
- (6) The nature of the agent's work and responsibilities of the parties. Duties of the principal and the agent should be listed specifically in the contract; and
- (7) A termination clause. While there is no statutory minimum notice of termination, three months notice is customary.

AGENT'S OBLIGATION

An agent is obliged to act for the benefit of his principal and to follow the principal's instructions; to maintain confidentiality on behalf of the principal; and to keep the principal informed of market and legal conditions in Kuwait. The agent should not represent other foreign companies whose products or services compete with the principal's.

TERMINATION

In the event the principal terminates an agency agreement, it will most likely be necessary to compensate the agent for good faith efforts undertaken to promote, sell and service the principal's products and services. Agency termination, whether disputed or not, can be a costly matter in Kuwait, unless the termination is for a cause. Kuwait's Commercial Code contains a formula for compensation.

Due to the highly price competitive nature of Kuwait's market, merchants consider middlemen or commission agents as an unnecessary third party. Thus, Kuwait's merchants prefer to deal directly with foreign manufacturers or their sole exporting agents. By the same token, Kuwait firms normally refuse to be appointed as sub-agents.

Foreign consulting firms do not need local agents; however, they must register with the Consultants and Development Projects Department at the Ministry of Planning to be eligible for Kuwait government contracts. It is also recommended that they work in association with local consultant offices.

The National Assembly approved and passed Law No. 8/2001 appertaining to the Direct Foreign Capital Investment Law in March 2001 and became effective a

month later. The law provides possibility of investment by foreigners in excess of 49 percent (up to 100 percent) in Kuwaiti companies. The Council of Ministers issued Resolution No. 1006/1 for 2003 on November 1, 2003 defining permissible economic activities and sectors that a foreign investor may undertake in Kuwait. These include industries, excluding projects pertaining to oil and gas exploration and production; infrastructure projects (water, power, waste water, drainage, or communications); banks, investment and exchange companies; insurance companies approved by the Ministry of Commerce & Industry; IT and programs development; hospitals and pharmaceuticals; transportation, housing projects and urban development; and real estate companies.

JOINT VENTURES/LICENSING

Foreign investors are offered a number of incentives to participate in joint ventures with Kuwaiti firms, including partial relief from Kuwaiti corporate taxes and management control options. Two or more persons, who are then jointly liable for the debts of the enterprise, may form a joint venture. Because all government procurement must be conducted with Kuwaiti citizens or firms, joint ventures between foreign investors and Kuwaiti nationals are often the best vehicle to gain access to this market.

It is usual for the terms and conditions to be set forth in a joint venture contract. A joint venture in Kuwait is not considered a legal entity, and as such, official notice by publication in the *Commercial Register* is not required. It is common for several foreign contractors involved in major projects to form a joint venture or consortium.

STEPS TO ESTABLISHING A SHAREHOLDING COMPANY OFFICE

As indicated, foreign firms can have direct access to the Kuwaiti market only through a local agent/partner. A local company cannot have a recognized representative personality and may not commence business until it is registered in the *Commercial Register and published in Kuwait Al-Youm*. The registration must include the company's memorandum, articles, and a declaration by the founders. This declaration must include a statement that the company founders have issued and paid for the subscribed shares and that the paid amount has been deposited in the company's account at a local bank.

Incorporation of a company takes from two to six months; upon incorporation a license is issued for display at the company. The cost of incorporation is about US \$10,000. Renting an office, furnishing it and recruiting staff are the next logical steps. Companies should budget a minimum of US \$25,000 (exclusive of rent) when opening a Kuwait office.

FRANCHISING

Kuwaitis are very receptive to franchising. High per capita income, significant spending power, tax-free earnings, and an upwardly mobile population are indicators. There is also high demand on quality education and training services. To respond to this need, the Government opened the door to foreign universities and colleges to establish branches in Kuwait. As the government's goal is to employ Kuwaiti nationals in the

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private sector and to replace third country national civil servants, the opportunity for training and skills development suppliers cannot be over emphasized.

U.S. fast food franchises are highly sought after by local companies. The U.S. Commercial Service expects the sector to continue to grow over the next few years despite the fact that most major fast food franchises are already established in the market. Franchises require the involvement of a Kuwaiti sponsor as a franchisee.

There is growing demand among processors/packers for bulk shipments of semi-processed food products for final processing and packaging in Kuwait, particularly for vegetable oils, fruit juices, dry pulses, nuts and snack foods.

PRICING A PRODUCT

The selling price of an American product in Kuwait includes the following elements in addition to the U.S. supplier's ex-factory price:

- U.S. inland transportation,
- U.S. export packing & documentation, freight, insurance,
- Kuwait customs duties (now a flat four percent on all imports except for food items which are customs-free),
- Kuwait customs clearance and inland transportation (US \$175/container generally),
- Kuwait agent's commission (typically 5 to 15 percent),
- Kuwait agent's administrative overhead and provision for waste and damage,
- Installation charges in Kuwait, if required.

A rule of thumb in Kuwait when pricing U.S. consumer products is to substitute the Kuwaiti dinar for the U.S. dollar, in effect multiplying the U.S. FOB port of export price by 3.4. In the case of pharmaceuticals, the Ministry of Public Health limits the overall mark-up from importer to consumer to 70 percent. Industrial items, sourced from the U.S. by private Kuwait firms to fill Kuwait government tenders, must be priced to compete with products from Asia.

The average markup on imported food products is about 10 to 15 percent. Retail food prices are generally 25 to 30 percent above import prices.

SELLING FACTORS/TECHNIQUES

The key selling factors in Kuwait are price, quality, effective after-sale service, payment facilitation, and attractive packaging (when applicable). Customer installment purchase plans and discounts for large volume purchases are also common promotional practices.

Selling techniques vary and include offering trade discounts, frequent sales, free service for equipment purchased during a limited period, reduced prices or give-always,

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warranties, trade-ins, and special promotional sale events. In 1999, Kuwait inaugurated a local shopping festival called Hala (Welcome) February. Special offers and promotional campaigns are most common during Hala, with hotels and entertainment attractions offering special rates to attract shoppers from outside Kuwait. The event was repeated annually since then except for 2003 due to Iraq's Liberation War. It should be noted, however, that any sale discounts require prior official approval of the Ministry of Commerce & Industry.

SALES SERVICE/CUSTOMER SUPPORT

U.S. firms that intend to operate in Kuwait should ensure that their sales contracts contain a follow-up maintenance clause. This clause helps to ensure that the quality and the service of the product remain up to American standards.

Consumer warranties are normally given for goods such as electrical appliances, vehicles, tires, watches, etc. Warranties range from 90 days to four to five years, depending on the product. U.S. firms should establish a factory service center for their products. Independent service centers also repair and maintain most consumer products, but may substitute cheaper repair parts for OEM.

After-sale service and customer support is especially crucial in the automotive and electrical home appliance sectors. Automobile dealers offer a one-year or 15,000-mile guarantee after the sale. They may also offer occasional discounted service fees. Home appliance dealers offer guarantees or warranties against faults or failures. They either fix or replace the appliance during the warranty period. Agents or dealers of home appliances maintain service fleets that make house calls.

MARKETING AND ADVERTISING

Marketing in Kuwait can be a challenging business. There are a number of competent advertising agencies in Kuwait serving U.S. and local companies. The U.S. Commercial Service can provide you with such list upon request.

Newspaper advertising in Kuwait is the most effective tool for communicating with the public, with newspapers securing about 40 percent of advertising market's share. Street signs and vehicle panels run a close second to newspapers in popularity, accounting for 30 percent sale of the market. Advertising is also available on several

FM radio stations, Arabic and English, and three television channels (Channel 1: Arabic news and programs; Channel 2: English news and programs; Channel 3: Arabic sports programs).

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Marketing through direct mail has become popular and is expected to grow as the postal service system continues to modernize. Direct marketing through personal contacts is also very effective.

NEWSPAPERS IN KUWAIT

Arabic Newspapers

al-'Anbaa

P.O. Box 23915 Safat

13100 Kuwait

Tel. (965) 483-1082

Fax: (965) 483- 1043

E-mail: marketing@alanbaa.com.kw

al-Qabas

P.O. Box 21800 Safat

13078 Kuwait

Tel: (965) 483-4320

Fax: (965) 481-2822

<http://www.alqabas.com.kw>

E-mail: tareqf@alqabas.com.kw

al-Ra'i al'Aam

P.O. Box 761 Safat

13008 Kuwait

Tel.: (965) 483-0523

Fax: (965) 483-0713

<http://www.alraialaam.com>

E-mail: alrailb@dm.net.lb

al-Seyassah

P.O. Box 2270 Safat

13023 Kuwait

Tel: (965) 481-3566

Fax: (965) 484-6905

www.alseyassah.com

E-mail: alseyassah@alseyassah.com

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al-Watan

P.O. Box 1142 Safat

13012 Kuwait

Tel: (965) 484-0950

Fax: (965) 481-4881

<http://www.alwatan.com.kw>

Email: webmaster@alwatan.com.kw

English Newspapers

Arab Times

P.O. Box 2270 Safat

13023 Kuwait

Fax: (965) 481-8267

Tel.: (965) 481-3566/484-98144

<http://www.arabtimesonline.com>

E-mail: arabtimes@arabtimesonline.com

Kuwait Times

P.O. Box 1301 Safat

13014 Kuwait

Tel: (965) 483-5618

Fax: (965) 483-5620

<http://www.kuwaittimes.net>

E-mail: info@kuwaittimes.net

SELLING TO THE GOVERNMENT

Tender Law No. 37 of 1964 regulates government tenders. The Central Tenders Committee (CTC) acts on behalf of most government ministries and is under the jurisdiction of the Council of Ministers. The Ministries of Housing, Defense, and Interior (including the security forces) can issue their own tenders independently of the CTC. All contracts with the government valued at KD 100,000 (US \$340,000) or more are subject to Kuwait Law No. 25 of 1996, which requires contractors/agents to report all payments made, received or that they will make or receive when securing a contract.

The CTC handles tenders sought by government ministries and public companies in the oil sector that are valued at more than US \$16,500 (KD 5,000). Tenders are usually awarded on the basis of the lowest price once technical compliance with the tender's specifications has been established. It is worth mentioning that if a bidder wins a tender but then refuses to sign the contract, the Ministry concerned has the right to confiscate the bid bond as well as the performance bond.

NEED FOR A LOCAL ATTORNEY

Disputes arising out of business transactions fall in two broad categories. The first category concerns payment collection issues: 1.) Either an American firm sends goods or commodities to a local firm that refuses to pay the full amount (claiming the goods do not comply with the terms and conditions of the Letter of Credit); or 2.) An American firm completes its assigned job or contract but it experiences difficulties receiving payments.

The second type of dispute usually arises from agency agreement terminations. To help resolve disputes, the U.S. Commercial Service Kuwait may intervene and attempt to resolve the situation. However, the Embassy cannot dictate or impose solutions or terms of resolution. If a mutual solution is not possible, the American firm may need to resort to the local courts. To gain access to Kuwait's judicial system, U.S. firms must hire a local attorney. The following is a partial list of qualified attorneys based in Kuwait. The list is arranged alphabetically. Inclusion on this list does not constitute an endorsement by the U.S. Commercial Service.

Local Attorneys

Abdul Aziz D. Al-Dekheel Law Office
(Legal Consultants)
P.O. Box 5120 Safat
13052 Kuwait
Tel: (965) 241-4102/3
Fax: (965) 241-4105
dadco@ncc.moc.kw
Contact: Mr. Abdul Aziz D. Al-Dekheel
Title: Attorney-at-Law

Abdulla S. Al-Rkayan & Associates
P.O. Box 5277 Safat
13053 Kuwait
Tel: (965) 242-1281
Fax: (965) 242-0582
Contact: Mr. Abdulla Al-Rkayan
Title: Attorney-at- Law

Ahmad G. Al-Otaibi & Partners
P.O. Box 5750 Safat
13058 Kuwait
Tel: (965) 242-5163
Fax: (965) 240-1251
E-Mail: alotaibi.partners@yahoo.com
Contact: Mr. Ernest Alexander
Title: Attorney-at-Law

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Al-Haifi & Habbas Law Bureau
P.O.Box 2849 Safat
13145 Kuwait
Tel: (965) 247-7940
Fax: (965) 240-2840
E-mail: aminhabbas@hotmail.com
Contact: Mr. Amin Habbas
Title: Attorney-at-Law

Anwar Al-Bisher Law Firm
P.O. Box 26292 Safat
13123 Kuwait
Tel: (965) 243-1122
Fax: (965) 240-2501
E-mail: aabisher@qualitynet.net
Contact: Ms. Mary Ann Sharp
Title: Attorney-at-Law

Al-Khebra Legal Consultants & Lawyers
P.O. Box 44747 Hawalli
32032 Kuwait
Tel: (965) 244-4885
Fax: (965) 242-2203
E-mail: dallal@alkhebra.com
Contact: Mr. Mohammad H. Al-Dallal
Title: Partner

Al-Waqyan - Al-Awadhi - Al-Saif Law Firm
(In Association with Dixon & Dixon)
P.O. Box 22833 Safat
13089 Kuwait
Tel: (965) 240-7040
Fax: (965) 240-7030
E-mail: nen@qualitynet.net
Contact: Mr. Adan Ibrahim
Title: Attorney-at-Law

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M.M. Al-Ghazali & Partners (Squire Sanders)
P.O. Box 26161 Safat
131122 Kuwait
Tel: (965) 802234
Fax: (965) 242-2895
E-mail: mail@algazali-law.com
Contact: Mr. Mishari Al-Ghazali
Title: Attorney-at-Law & Partner

Libra Law Firm
P.O. Box 22379 Safat
13084 Kuwait
Tel: (965) 246-6446
Fax: (965) 246-6447
E-mail: ammar@libralawfirm.com
Contact: Mr. Ammar Milhem
Title: Attorney-at-Law & Partner

Salman Duajj Al-Sabah Law Office
P.O. Box 5117 Safat
13052 Kuwait
Tel: (965) 240-0261
Fax: (965) 240-0260
E-mail: Ktlaw@qualitynet.net
Contact: Hania Farah
Title: Attorney-at-Law

Al-Sarraf & Al-Ruwayeh (in association with Stephenson Harwood)
P.O. Box 1448 Safat
13015 Kuwait
Tel: (965) 240-0061
Fax: (965) 240-0064
E-Mail: shabbas@asarlegal.com
Contact: Mr. Issam "Sam" Habbas
Title: Attorney-at-Law

Yousef Essa Al-Matar Law Office
P.O. Box 23198 Safat
13092 Kuwait
Tel: (965) 241-2283
Fax: (965) 242-740
Contact: Mr. Yousef Essa Al-Matar
Title: Attorney-at-Law

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